

BEST AVAILABLE COPY**REMARKS**

Claims 1-6 and 9-15 are pending in the application. Claims 5 and 11-13 are amended to correct language errors. Claims 7-8 have been cancelled from the application without prejudice. No new matter has been added to the application by way of these claim amendments.

The examiners' claim objections and rejections are overcome or they are traversed as set forth below.

I. THE SECTION 112, 2nd PARAGRAPH REJECTION

The examiner rejected claims 5, 7-8 and 11 under 35 USC 112, 2nd paragraph.

The examiner's rejections are overcome as follows:

- The claim 5 rejection is overcome by inserting the word "equal" between the word "with" and "to",
- The examiner's claim 7 and 8 rejections are moot. Claims 7 and 8 are cancelled from the application without prejudice above.
- The claim 11 rejection is overcome by replacing the word "a" with the word "the" at line 4 of the claim.

II. THE SECTION 112, 1st PARAGRAPH REJECTION

The examiner rejected claims 7-8 under 35 USC 112, first paragraph. This rejection is moot. Claims 7-8 are cancelled from the application without prejudice above.

BEST AVAILABLE COPY**III. THE CLAIM OBJECTIONS**

The examiner objected to claims 12 and 13 on the basis of several claim informalities. The examiner's objections are overcome above by amending claims 12-13 as suggested by the examiner.

IV. TRAVERSE OF THE ANTICIPATION AND OBVIOUSNESS REJECTIONS

The examiner rejected all pending application claims for anticipation or for obviousness. The examiner's anticipation and obviousness rejections all rely upon the Studer article. Contrary to the examiner's assertion, the Studer article is not prior art to the present application and each of the examiner's prior art rejections must be withdrawn.

35 USC § 119 is controlling in this case. 35 USC § 119 provides:

"an application for patent for an invention filed in this country by any person who has, or whose legal representative or assigns has previously regularly filed an application for patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States ... shall have the same effect as the same application would have if filed in this country on a date on which the application for patent for the same invention was first filed in such foreign country..."

The present application was originally filed in Great Britain on January 14, 2002. The same application is the subject of a PCT application designating the United States and filed on February 14, 2003. Thus, 35 USC § 119, provides that January 14, 2002 is the effective filing date of the present application for purposes of identifying prior art against the application.

The Studer article was published in July of 2002 according to the email communication attached to the cover of the article. The Studer article was published after the January 14, 2002 effective filing date of the present application and is not prior art under any paragraph of 35 USC

BEST AVAILABLE COPY

§ 102.

The examiner's allegation that Studer is prior art to the present application is wrong and without legal support. The examiner cites MPEP 2133.02 in support of the position that Studer is prior art under Section 102(b). The recited MPEP section merely identifies when an author's own work can be used as prior art against a later filed application. The section recited by the examiner is inapplicable here. Because Studer is not prior art to the claimed invention, each of the the examiner's anticipation and obviousness rejections must be withdrawn.

CONCLUSION

Claims 1-6 and 9-15 are believed to be patentable for the reasons recited above. Favorable reconsideration and allowance of all pending application claims is courteously solicited.

Date: December 16, 2005

By: 

A. Blair Hughes
Reg. No. 32,901
312-913-2123